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In The
Supreme Court of the United States

OSCAR STILLEY

Petitioner

vs.

STARK LIGON, AS EXECUTIVE DIRECTOR OF THE ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

Respondent

On Petition for a Writ of Certiorari
To The Supreme Court of the State of Arkansas

****

PETITION FOR WRIT OF CERTIORARI

****

Oscar Stilley, Attorney at law
701 S. 21st Street
Fort Smith, AR 72901
Pro se
479 573-0726 Phone
479 573-0647 Fax
oscar@oscarstilley.com email
Arkansas Bar # 91096

QUESTION PRESENTED

1) Does the usurpation of the role of judicial officer of a duly constituted and legally separate tribunal, by the accusers of an attorney, in clear and undeniable violation of the written rules of the tribunal, in order to obtain an unlawful benefit for the usurpers, constitute a violation of due process?

PARTIES TO THE PROCEEDING

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PETITION FOR WRIT OF CERTIORARI

Petitioner Oscar Stilley respectfully requests that a writ of certiorari be issued to review the judgment of the Arkansas Supreme Court in this case.

OPINIONS BELOW

Appendix A is the June 21, 2007 opinion of the Arkansas Supreme Court imposing a 6 month suspension from the practice of law in Arkansas courts (stayed pending this petition for certiorari), reproduced beginning at App. 1, cited as *Stilley v. Supreme Court Committee on Professional Conduct,* 370 Ark. 294, (Ark., June 21, 2007).[1]

Appendix B is an Arkansas Supreme Court decision letter dated February 8, 2007 - correcting caption, denying motion for recusal and hearing for same, and denying motion for certiorari, prohibition, mandamus, and for other relief, and rebriefing, reproduced beginning at App. 21.

Appendix C is the Arkansas Supreme Court Committee on Professional Conduct (Panel B) findings

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[1] This cite is used in the official reports. *Stilley v. Supreme Court Committee on Professional Conduct,* 370 Ark. 294, (Ark., June 21, 2007), is the same case. A motion to correct the caption to *Oscar Stilley v. Stark Ligon, As Executive Director of the Arkansas Supreme Court Committee on Professional Conduct* was granted on February 8, 2007, but was not used on the official reports. This case is cited by the corrected style throughout this petition.

and order dated May 4, 2006 which suspends Oscar Stilley from the practice of law in Arkansas courts for 6 months, and orders the payment of $150 in costs, reproduced beginning at App. 23.

Appendix D is the Arkansas Supreme Court Committee on Professional Conduct (Panel B) order denying a motion for finding of facts, conclusions of law, reconsideration, new trial or other relief, etc, on June 12, 2006, reproduced beginning at App. 29.

Appendix E is the Arkansas Supreme Court Committee on Professional Conduct (Panel B) order dated January 19, 2006, denying a motion for specific findings concerning rights and determinations by the tribunal, reproduced beginning at App. 31.

Appendix F is an Arkansas Supreme Court Committee on Professional Conduct (Panel B) order of January 06, 2005, denying a motion to strike order purporting to grant motion to quash, reproduced beginning at App. 34.

Appendix G is the Arkansas Supreme Court letter order dated February 14, 2003, quashing subpoenas directed to the justices of that court, reproduced beginning at App. 36.

Appendix H is the Arkansas Supreme Court Committee on Professional Conduct, (Panel A) findings and order dated November 19, 2002, imposing a three month suspension, a fine of $1,000, and costs before the Arkansas Supreme Court Committee on Professional Conduct, reproduced beginning at App.

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Appendix I is the Arkansas Supreme Court decision letter dated September 6, 2007, denying petition for rehearing, reproduced beginning at App. 43.

STATEMENT OF JURISDICTION

The judgment for which review is sought was entered June 21, 2007. See Appendix A at App. 1.

Rehearing was timely sought, and denied on September 6, 2007. See Appendix I at App. 43. Thus the petition for writ of certiorari is due December 5, 2007.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a), for a petition for writ of certiorari to the Arkansas Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Constitution Amendment 1, providing that "Congress shall make no law... abridging the freedom of speech, ... or the right of the people ... to petition the Government for a redress of grievances."

US Constitution Amendment 5, providing that "No person shall... be deprived of life, liberty, or property without due process of law..."

US Constitution Amendment 14, providing that "Nor shall any state deprive any person of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE

A relatively lengthy explanation of prior related litigation is necessary to an understanding of the Arkansas disciplinary proceedings which have precipitated this petition. In order to better understand the history, certain legal provisions are reproduced in this section, but this also reduces the verbiage required for Petitioner to state the reasons for which he requests that certiorari be granted.

Petitioner is an Arkansas lawyer with a history of political activity principally within the State of Arkansas. One such venture was the sponsorship of an initiative petition pursuant to Arkansas Constitution Amendment 7, for the principal purpose of abolishing a recently enacted sales tax on used cars. This was referred to officially as proposed Arkansas Constitution Amendment 4 of 2000 (Amendment 4).

A legal challenge to Amendment 4 was brought by H. Baker Kurrus. The Arkansas Supreme Court, in *Kurrus v. Priest,* 342 Ark. 434, 29 S.W.3d 669 (Ark., 2000) voted 4-3 to direct the Arkansas Secretary of State not to officially count the votes for and against Amendment 4.

The primary reason was a conclusion that a proposed Arkansas Constitutional amendment could not overrule a previous amendment. The unofficial tally was approximately 61% of the voters favoring the amendment, with 39% against, despite the absence of a campaign in favor of the amendment, and strenuous opposition to the amendment in newspapers around

the state.

Another Arkansan named Robert White observed that the Arkansas Supreme Court's logic rendered a great deal of the salary paid to the members of the Arkansas Supreme Court illegal and subject to recovery back in an illegal exaction lawsuit.

White retained Petitioner as counsel and sued the Arkansas Supreme Court justices in their individual capacities, praying for a return of the illegal part of their compensation, if the rule of *Kurrus v. Priest, supra,* were to be treated as good law. Alternatively, White sought an injunction compelling Arkansas Secretary of State Sharon Priest to enroll Amendment 4 as part of the Constitution of the State of Arkansas, and additional remedies on behalf of the citizens and taxpayers of Arkansas. The decision in White's case is cited as *White v. Priest*, 348 Ark. 135, 348 Ark. 783, 73 S.W.3d 572, (Ark., April 10, 2002).

The *White v. Priest* complaint was filed March 26, 2002. The justices, along with the other defendants in the case, were served with the complaint, along with a motion for recusal of the sitting justices.

Fifteen days later, on April 10, 2002, without notice, without motion, and without compliance with the most rudimentary requirements of federal or state due process, the Court summarily denied the motion for recusal and dismissed most of the complaint, including those parts claiming money from the justices in their individual capacities, saying:

White's claim is not only premature, it is also a claim for illegal exactions under Ark. Const. art. 16, § 13, and can only be commenced in a trial court; such a suit cannot be commenced in the appellate courts. *See Franz v. State*, 296 Ark. 181, 754 S.W.2d 839 (1988). **White offers no brief, citation of authority, or argument to support his underlying argument for the justices' recusal, and we are unaware of any.** Thus, this court is without original jurisdiction to hear any of the alleged claims for illegal exactions, and we dismiss Count 1.

Even if this court had original jurisdiction to initially consider a claim based on illegal exactions, the justices still would be empowered and duty bound to consider and decide these issues White strives to raise. Under *Ark. Code of Judicial Conduct Canon* 3(E)(1), while a judge must disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, the "Rule of Necessity" may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute. *See* Commentary to Canon 3(E)(1);[2] ....
(Emphases added) (*White v. Priest*, 348 Ark. 135, 141)

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[2] The justices of the Arkansas Supreme Court wrote this commentary.

Petitioner never had a chance to file a brief on behalf of Robert White, yet the Arkansas Supreme Court justices complained about the absence of a brief! There was no responsive pleading, no notice of a possible impending dismissal, and no request for briefs.

The Court furthermore ordered Petitioner to show cause in writing, within 7 days, why he should not be sanctioned for violating Arkansas Rule of Civil Procedure 11. *White v. Priest* 348 Ark. 135, 144, 73 S.W.3d 572, 576 (Ark.,2002). A request for an extension of time to polish the brief was denied.

Appellant then made his arguments in a 70 page "Brief Supporting the Showing of Cause Why Sanctions Are Not Permissible, Renewed Motion for Recusal, and Motion for Reinstatement of Complaint."

The Court by its own motion struck the brief without considering it, declared that Petitioner had violated Rule 11, and referred Petitioner to the Arkansas Supreme Court Committee on Professional Conduct for punishment.

In his dissent, Justice Brown stated that "My research has developed no case where the Rule of Necessity has been applied when a process exists for the appointment of a special judge to sit for the disqualifying judge." *White v. Priest,* 348 Ark. 135, 148, 73 S.W.3d 572, 583 (Ark.,2002)

The majority did not counter this statement. They simply forged ahead in sitting on a case in which

they were individual capacity defendants exposed to tens of thousands of dollars of potential personal liability.

In footnote 1 of *White v. Priest* 348 Ark. 135, 145, 73 S.W.3d 572, 577 (Ark., 2002) the Court said:

> FN1. White cites Ark. Const. amend. 9, § 2 for the proposition that the amendment prohibits supreme court justices from receiving compensation greater than that authorized at the beginning of the term to which the judge was elected. He then refers to Amendment 43 which he says permits the increase of salaries of justices of the supreme court during the term for which the justice has been elected. White concludes that, if *Kurrus* is the law, then Amendment 43 is plainly and facially unconstitutional as violating or conflicting with an existing substantive provision of the Arkansas Constitution. Of course, Amendments 9 and 43 are not in issue here, but we would merely observe at this point that the Publishers Notes to Amendment 43 suggest Amendment 43 **probably** supersedes Amendment 9.
> (Emphasis added)

The justices clearly understood the claim, tacitly acknowledging that it might prevail after a full hearing, saying Amendment 43 "probably" supersedes Amendment 9. This was the primary question presented in *White v. Priest*. At least part of the complaint was by the *White* Court's own admission and conduct required to be brought as an original action in

the Arkansas Supreme Court.

Amendment 43 of the Arkansas Constitution reads as follows:

> AMENDMENT 43. SALARIES AND EXPENSES OF JUDICIAL OFFICERS
>
> 1. Salaries and expenses of judges.
>
> The General Assembly shall by law determine the amount and method of payment of salaries and expenses of the judges of the Supreme Court, Circuit Courts, Chancery Courts, and Municipal Courts of Arkansas; **provided such salaries and expenses may be increased but not diminished during the term for which such judges are elected**; provided further that the salaries of Circuit and Chancery Judges shall be uniform throughout the state.
> (Emphases added)

It was uncontested that if *Kurrus v. Priest,* 342 Ark. 434, 29 S.W.3d 669 (Ark., 2000) were to be treated as good law, then Amendment 43 would be invalid as inconsistent with Amendment 9, which provides in pertinent part:

> 2. Compensation of judges.
>
> The Supreme Court judges shall at stated times receive compensation for their services to be fixed by law. When the salary of the judges

> under this amendment to the Constitution shall have been established by law, such salary **shall not thereafter be increased or diminished during their respective terms.** ... (Emphases added)

In the 70 page brief for which Petitioner has been ordered to serve a 6 month suspension, Petitioner said:

> It is incontrovertible that in this case the Court will make new law. If stare decisis is respected, the Court must either overrule *Kurrus v. Priest*, 342 Ark. 434, 29 S.W.3d 669 (2000), to save Amendment 43, thus saving themselves tens of thousands of dollars each while imposing upon Plaintiff and all other taxpayers greater tax burdens, or else uphold the principle in *Kurrus*, thus imposing a huge financial burden upon themselves, and further throwing the entire Arkansas Constitution into a state of uncertainty and turmoil.

In *White v. Priest*, White raised Arkansas Constitution Amendment 80 ,[3] which provides:

> No Justice or Judge shall preside or participate in any case in which he or she might be interested in the outcome, in

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[3] White also raised A.C.A. § 21-8-304, an Arkansas statutory provision having a similar purpose, reproduced herein as Appendix J.

> which any party is related to him or her by consanguinity or affinity within such degree as prescribed by law, or in which he or she may have been counsel or have presided in any inferior court.

White's 70 page brief also cited an abundance of federal constitutional provisions and related case law, including the 1st Amendment[4] and federal due process,[5] as grounds for reinstatement of the complaint, recusal, and further proceedings in compliance with the Arkansas Rules of Civil Procedure.

It cannot be credibly denied that the justices were interested in the outcome of *White v. Priest*. The salaries for the 5 years next past to the filing of the *White v. Priest* lawsuit, for the Chief Justice, July 1 through June 30, were $114,213 for 1997-1998, $117,411 for 1998-1999, $123,516 for 1999-2000, $126,975 for 2000-2001, $130,276 for 2001-2002, and $133,663 for 2002-2003. The figures for the salaries of associate justices for the same period were $105,507 for 1997-1998, $108,461 for 1998-1999, $114,101 for 1999-2000, $117,296 for 2000-2001, $120,346 for 2001-2002, and $123,475 for 2002-2003.

Unless Amendment 43 validly overruled Amendment 9, all increases of salary for sitting Arkansas Supreme Court justices during a given term amounted to illegal exactions, which are recoverable in

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[4] Page 49, 50, 51, etc.

[5] Pages 8, 10, 12, 43, etc.

a lawsuit which may be filed by any citizen and taxpayer of the state pursuant to the Arkansas Constitution and well established case law.

Under the *Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law*, Section 5(C), referrals from judges or justices must be treated as formal complaints and prosecuted. Complaints are first considered by a panel consisting of 4 lawyers and 3 lay persons. This first panel will thereupon issue a document entitled "findings and order."

A lawyer who is dissatisfied with the result has the right to request a public hearing before a different panel of the Committee. Thereupon the original findings and order are set aside. A different 7 member hearing panel is assigned to hear the matter de novo, and to issue a new "findings and order." A lawyer dissatisfied with this result may appeal to the Arkansas Supreme Court.

A complaint was made under the caption *In Re Oscar Stilley*, CPC[6] 2002-077. Petitioner first opposed the formal complaint based both on due process and vagueness grounds, among others. Panel A found certain violations and imposed a 3 month suspension from the practice of law, along with a $1,000 fine. **(App. 42)**

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6 An abbreviation of "Committee on Professional Conduct."

Petitioner asked for a public hearing. Panel B, the hearing panel, made among other findings the following:

> 1. The Court found his conduct, in filing this brief with its intemperate and disrespectful contents **to the Court,**[7] to constitute a breach of the obligation of his oath of office as an attorney-at-law, due to his general tone of disrespect for the code of ethics.
>
> 2. The Court found his brief to be a clear violation of Ark. R. App. P. - Civ. 11, in that it showed his dissatisfaction with earlier opinions of the Court with which he disagreed, and that his brief, in revisiting these prior cases, offered nothing new showing the precedential value of those opinions should be reversed.
> (Emphasis added) **(App. 26)**

Petitioner obtained subpoenas commanding his accusers, the Arkansas Supreme Court justices, to appear for depositions,[8] and caused same to be served

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The related Panel A order language is identical save for the absence of the emphasized text. **(App. 41)**

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This is expressly authorized by the rules and seems to have been universally enforced except in this case. Bankruptcy Judge James Mixon testified in a disbarment trial against Michael Price in *Ligon v. Price*, 360 Ark. 98, 113, 200 S.W.3d 417 (2004); in *Dodrill v. Executive Director, Committee on Professional Conduct* 308 Ark. 301, 305, 824 S.W.2d 383, **385 (Ark.,1992), Judge Mixon apparently appeared for the

on the justices. On February 14, 2003, the Arkansas Supreme Court justices summarily, without notice or a hearing, entered an order quashing their own subpoenas.

Petitioner filed a motion for reconsideration on February 19, 2003. Petitioner complained of many violations of due process in addition to the usurpation, such as the conflict of interest and the failure to give notice with opportunity to be heard.

Panelists serve 6 year terms, but generally only serve as chairman of a panel for one year at a time. The 2003 panel chair declined to rule on this motion, as did the 2004 panel chair. Almost two years later, on January 6, 2005, the third Panel B chairman, Harry Truman Moore, summarily and without explanation denied the motion for reconsideration. **(App. 34)** A January 19, 2006 motion for findings of facts and conclusions of law was denied, save to the extent that the Executive Director had already answered questions in his response. **(App. 33)**

On May 4, 2006, Panel B determined that Petitioner had violated a somewhat different set of Arkansas Model Rules of Professional Conduct, and voted 4-3 to impose a 6 month suspension from practice in Arkansas courts. **(App. 23-28)** The suspension was stayed by Panel B pending appeal to the Arkansas Supreme Court, and later stayed by the Arkansas Supreme Court pending this petition for

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prosecution and was cross examined by the Respondent attorney.

certiorari.

Petitioner timely appealed the Panel B findings and order to the Arkansas Supreme Court. A motion for recusal of the accusing justices was denied. **(App. 22)** The Court also rejected an attempt to compel the chairman of Panel B to enter a reasoned decision concerning among other things the allegations of usurpation by the Supreme Court justices. *Id.*

The Arkansas Supreme Court, including 5 justices who were also the accusers of Oscar Stilley, affirmed the Panel B findings and order by an opinion June 21, 2007. Rehearing was denied September 6, 2007, along with a motion for recusal from consideration of the petition for rehearing. This petition for certiorari was filed within the 90 days allowed from denial of rehearing.

REASONS FOR GRANTING THE WRIT

1) The usurpation of the role of judicial officer of a duly constituted and legally separate tribunal, by the accusers of an attorney, in clear and undeniable violation of the written rules of the tribunal, in order to obtain an unlawful benefit for the usurpers, constitutes a violation of due process.

A) A usurpation of another judicial office constitutes a per se violation of due process.

Arkansas Supreme Court Justices Dub Arnold, Donald Corbin, Annabelle Clinton Imber, Jim Hannah, Robert Brown, Tom Glaze, and Ray Thornton all entered an order in the CPC 2002-077, quashing their own subpoenas. **(App. 36-38)**

Each of the stated justices have not only refused to recuse from the decision of their own accusation, they have usurped the role of the chair of the relevant panel of the Committee on Professional Conduct. The pertinent provision of the *Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law*,[1] Section 8(B), sets forth the rules for the resolution of discovery disputes. Sections 8(B) and (C) provide:

> B. Resolution of Disputes. Disputes concerning discovery shall be determined by **the chair of the panel** to which the matter was assigned. All discovery orders by the chair are interlocutory and may not be appealed prior to the entry of the final order.
>
> C. Rules of Civil Procedure Not Applicable. Proceedings under these rules are not subject to the Arkansas Rules of Civil Procedure regarding discovery **except those relating to depositions and subpoenas.**
> (Emphases added)

The Arkansas Supreme Court, despite being directly and unequivocally presented with the

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[1] Hereinafter sometimes simply "*Procedures.*"

argument that their conduct violated these provisions, refused to consider it *or even acknowledge that such an argument was made*. This fact is readily shown by a word search of the Arkansas Supreme Court's opinion.

This is not because the Arkansas Supreme Court was unaware of the existence of the *Procedures*. Far from it, the Court's opinion referenced the following provisions from the *Procedures*: 5(A), 12(B), 17(B), 17(C). **(App. 6, 9, 17, 18)**

Section 8(B) is not cited or acknowledged in the Arkansas Supreme Court opinion. The Arkansas Supreme Court recited the issues, under the heading "*Recusal and Due Process*" as follows:

> Stilley's first argument for reversal is that the Committee erred in permitting the sitting justices of the Arkansas Supreme Court to usurp the role of the Panel B Chair and to continue to sit and act on the Committee, depriving Stilley of witnesses and depositions, and depriving him of due process. Essentially, Stilley's argument is that the justices of this court should have recused from this case because (1) the justices are Stilley's "accusers" and they have an interest in the outcome; and (2) due process is violated when a judicial officer presides over a case, alone or with others, where the judicial officer has an interest in the outcome.
>
> These accusations were made, but Stilley **also**

directly and unequivocally stated that the stated justices had violated their own rules by entering an order which, by the terms of rules created by the Arkansas Supreme Court, could only be entered by the Chair of the relevant panel. None of the justices who signed the order quashing their own subpoenas ever contended that they were the "chair of the relevant panel" nor could they.

The Arkansas Supreme Court justices who usurped the role of the chair of the panel in violation of Procedures Section (8B) refused to acknowledge the existence of this legal provision or the fact that they had violated it. Furthermore, these justices also summarily denied a petition requesting that Panel B be ordered to enter a reasoned opinion explaining how such a usurpation might be lawful. **(App. 22)** Such a remedy is regularly allowed in similar cases in Arkansas. *Griffen v. Arkansas Judicial Discipline and Disability Com'n* 368 Ark. 557(Ark.,2007); *Arkansas Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 20 S.W.3d 301 (2000). Petitioner was not necessarily entitled to rulings that satisfied him, but he ***was*** entitled to rulings.

Arkansas Code Ann. § 16-118-105 (Supp. 2003), provides in pertinent part:

> (b)(1) Whenever a person usurps an office or franchise to which he is not entitled by law, an action by proceedings at law may be instituted against him, either by the state or the party entitled to the office or franchise, to prevent the usurper from exercising the office or franchise.

In the federal system a usurpation of judicial power is sufficient to invoke the extraordinary remedy of mandamus. *Schlagenhauf v. Holder*, 379 U.S. 104, 110, 85 S.Ct. 234 (1964) "The writ is appropriately issued, however, when there is "usurpation of judicial power" or a clear abuse of discretion...) (Citation omitted). See also e.g. *In Re Roe*, 257 F.3d 1077, 1079 (9th Cir. 2001).

This Court should not hesitate to declare that a usurpation of a judicial office constitutes a per se violation of due process.

B) Judgment by an accuser violates due process.

The basic rule is set forth in *In re Murchison*, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942, (1955):

> "A fair trial in a fair tribunal is a basic requirement of due process. **Fairness of course requires an absence of actual bias in the trial of cases**. But our system of law has always endeavored to prevent even the probability of unfairness. **To this end *no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.*** That interest cannot he defined with precision. Circumstances and relationships must be considered. This Court has said, however, that `every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear, and true between the State and the

> accused denies the latter due process of law. *Tumey v. State of Ohio*, 273, U.S. 510, 532, 47 S.Ct. 437, 444, 71 L.Ed. 749.
>
> Such a stringent rule may sometimes bar trial by judges who have no actual bias and who could do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.' (Emphases added)

In *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, at 821 (1986), this Court said:

> The record in this case presents more than mere allegations of bias and prejudice, however. Appellant also presses a claim that Justice Embry had a more direct stake in the outcome of this case. In Tumey, while recognizing that the Constitution does not reach every issue of judicial qualification, the Court concluded that "it **certainly violates** the Fourteenth Amendment . . . **to subject [a person's]** liberty or [Page 822] **property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case**." 273 U.S., at 523.
>
> More than 30 years ago Justice Black, speaking for the Court, reached a similar conclusion and recognized that under the Due Process Clause no judge "can be a judge in his

own case [or be] permitted to try cases where he has an interest in the outcome." *In re Murchison*, 349 U.S. 133, 136 (1955). He went on to acknowledge that what degree or kind of interest is sufficient to disqualify a judge from sitting "cannot be defined with precision." Ibid. Nonetheless, a reasonable formulation of the issue is whether the

"situation is one `which would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true.'" *Ward v. Village of Monroeville*, supra, at 60.

Under these prior holdings, we examine just what factors might constitute such an interest in the outcome of this case that would bear on recusal. At the time Justice Embry cast the deciding vote and authored the court's opinion, he had pending at least one very similar bad-faith-refusal-to-pay lawsuit against Blue Cross in another Alabama court. The decisions of the court on which Justice Embry sat,[fn2] the Alabama Supreme Court, are binding on all Alabama courts. We need not blind ourselves to the fact that the law in the area of bad-faith-refusal-to-pay claims in Alabama, as in many other jurisdictions, **was unsettled at that time**, as the court's close division in deciding this case indicates. When Justice Embry cast the deciding vote, **he did not merely apply well-established law** and **in fact quite possibly made new law**; **the**

> **court's opinion does not suggest that its conclusion was compelled by earlier decisions.** Instead, to decide the case the court stated that "it is first necessary to review the policy considerations, elements, and instructive guide [Page 823] posts set out by this court in earlier case law." 470 So.2d, at 1070. And in another case the court acknowledged that "the tort of bad faith refusal to pay a valid insurance claim is in the embryonic stage, and the Court has not had occasion to address every issue that might arise in these cases." *National Savings Life Ins. Co. v. Dutton*, 419 So.2d, at 1362. (Emphases added)

The Arkansas Supreme Court justices who accused Petitioner plainly had an interest in the outcome of *White v. Priest*. At the time of their accusations they were defendants in a case claiming tens of thousands of dollars each from those justices, if they ruled consistently with *Kurrus v. Priest*. These justices had an interest in deflecting these claims, and punishing Petitioner for bringing them before the court.

The Arkansas Supreme Court justices accused Petitioner of violations of the rules of ethics. Both panels, rather than make independent determinations concerning whether or not violations were committed, simply said that the Arkansas made findings of violations, and thereupon imposed punishment based

upon the accusations.[2] **(App. 26, 40, 41)**

Therefore, Petitioner in large part never had any meaningful consideration of his arguments except by his accusers. Furthermore, in this case the decision made new law. In *Perryman v. Hackler*, 323 Ark. 500, 505, 916 S.W.2d 105 (1996) the Court said that "The only authority for sanctioning comments in a brief is when the comments are disrespectful to a trial court,"[3] citing Ark. Sup. Ct. R. 1-5.

No one contended that the Arkansas Supreme Court was a "trial court." The Arkansas Supreme Court in the opinion below cites two cases, *Ligon v. McCullough*, 368 Ark. 598, (Ark. 2007) and *Davenport v. Lee* 349 Ark. 113, 115, 76 S.W.3d 265, 266 (Ark., 2002). Both those cases cite *White v. Priest*, and no other authority, for the specific proposition that the Court has the power to sanction comments in briefs thought to be disrespectful to the Arkansas Supreme Court. In *Davenport v. Lee* the Court said:

> As set forth in Ark. Sup.Ct. R. 1-5, "No argument, brief, or motion filed or made in the Court shall contain language showing disrespect for the circuit court." Just as we will

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2 Petitioner was ruled to have violated Rule 11 by Panel B members who admittedly never read either the *White* complaint or brief.

3 Upon the merger of law and equity courts the term "trial court" was changed to "circuit court."

> not allow a lawyer to show disrespect for the judges sitting in circuit courts, we will not allow an attorney to show disrespect for the members of this court. See, e.g., *White v. Priest*, 348 Ark. 783, 73S.W.3d 572 (2002) (per curiam).

We all know that *e.g.* is an abbreviation of *exempli gratia,* which means "for example." However, the truth of the matter is that in *Davenport v. Lee* it was ***not*** an example but rather the ***only possible*** case for the proposition. In *Ligon v. McCullough* it was in fact the only case cited for the premise.

Petitioner is aware of the rule against language in briefs disrespectful to a trial court, and scrupulously follows same. In over 50 appeals to the Arkansas Supreme Court or Court of Appeals, Petitioner has never been punished for a brief containing language disrespectful to a trial or circuit court, and to his recollection has never been accused of it.

This case unquestionably involved a change of the law. Furthermore, it was a de facto change in the law rather than one done in accordance with established procedures, and thus raises the concerns of *Aetna Life Insurance Co. v. Lavoie* along with others.

Petitioner has steadfastly denied that his conduct violated the ethical rules, or that his language was strident. Even if a disinterested tribunal could possibly find some fault with Petitioner's brief, due process has an inherent value. Petitioner wants his chance to litigate the merits of any ethics charges against him in an impartial tribunal.

This Court has in the past generally presumed that state bar disciplinary authorities would provide a fair opportunity for lawyers to litigate constitutional claims. In *Middlesex Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 102 S.Ct. 2515 (1982) the Court said:

> ... Under New Jersey's procedure, its Ethics Committees constantly are called upon to interpret the state disciplinary rules. Respondent Hinds points to nothing existing at the time the complaint was brought by the local Committee to indicate that the members of the Ethics Committee, the majority of whom are lawyers, would have refused to consider a claim that the rules which they were enforcing violated federal constitutional guarantees. Abstention is based upon the theory that "`[t]he accused should first set up and rely upon his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection.'" *Younger v. Harris*, 401 U.S., at 45, quoting *Fenner v. Boykin*, 271 U.S. 240, 244 (1926).

The record clearly shows that the presumption does not square with the reality in the case below. However, the presumption can be restored by a reversal with directions that the accusers of Petitioner recuse, and allow the governor of Arkansas to appoint disinterested justices.

C) Judicial economy and the reputation of

the judiciary requires some involvement by the US Supreme Court on this petition for certiorari.

In this case the procedure in Arkansas courts is unmistakably deficient. Petitioner cannot imagine that this Court or any other court could by express words determine that a usurpation, by one judicial officer, of the power of another judicial officer sitting in another tribunal, might nevertheless under some circumstances comply with the requirements of constitutional due process.

On the other hand the time of this august tribunal is an extremely valuable and limited commodity. Petitioner submits that this case merits the time of the Court for the following reasons.

First, the matter has a high probability of coming back before the Court. In *In re Ruffalo*, 390 U.S. 544, 550 (1968), the Court said:

> Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. *Ex parte Garland*, 4 Wall. 333, 380; *Spevack v. Klein*, 385 U.S. 511, 515. He is **accordingly entitled to procedural due process, which includes fair notice of the charge.** See *In re Oliver*, 333 U.S. 257, 273. It was said in *Randall v. Brigham*, 7 Wall. 523, 540, that when proceedings for disbarment are "not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made and

opportunity afforded him for explanation and defence." **Therefore, one of the conditions this Court considers in determining whether disbarment by a State should be followed by disbarment here is whether "the state procedure from want of notice or opportunity to be heard was wanting in due process."** *Selling v. Radford*, 243 U.S. 46, 51.

In the present case petitioner had no notice that his employment of Orlando would be considered a disbarment offense until after both he and Orlando had testified at length on all the material facts pertaining to this phase of the case. As Judge Edwards, dissenting below, said, "**Such procedural violation of due process would never pass muster in any normal civil or criminal litigation.**"[fn3] 370 F.2d, at 462.
(Emphasis added)

Petitioner is admitted to the bar of the following Courts:

Jurisdiction	**Date admitted**
Arkansas Supreme Court	April 15, 1991
Western District of Arkansas	June 25, 1991
Eastern District of Arkansas	June 25, 1991
Central District of Illinois	June 6, 2002
Northern District of Oklahoma	April 13, 2001
Northern District of Florida	February 23, 2005
4th Circuit Court of Appeals	February 7, 2006

5th Circuit Court of Appeals .....June 12, 2006
6th Circuit Court of Appeals .....February 4, 2004
7th Circuit Court of Appeals .....April 30, 2003
8th Circuit Court of Appeals .....October 13, 1993
9th Circuit Court of Appeals .....May 2, 2005
10th Circuit Court of Appeals .....August 8, 2003
11th Circuit Court of Appeals .....January 23, 2001

If certiorari is not granted, Stark Ligon, Executive Director of the Arkansas Supreme Court Committee on Professional Conduct, will dutifully send out notices of the Arkansas suspension to each of the jurisdictions listed above. This will trigger the right to *Ruffalo* hearings.

If any jurisdiction imposes a reciprocal suspension from the practice of law, that punishment is likely to result in another petition for certiorari to this Court. If no reciprocal punishment is meted out, the Arkansas proceedings will be at the very least implicitly condemned, but not in such a way as to fully protect the legal rights of Petitioner. The good reputation of our judicial branch of government will be enhanced by granting this petition for certiorari and according Petitioner the process he was due from the beginning.

Second, this petition can be disposed of without a great deal of judicial resources. In this case Petitioner was suspended from the practice of law in Arkansas courts for language in a brief that was not even alleged to be false or contemptuous. There was no formal written law or rule against such language, and the case law actually said that the formal

punishment of such language was not within the purview of the Arkansas Supreme Court's powers and duties. A suspension from the practice of law under such circumstances clearly violates due process as well as the First Amendment's protection of free speech and petition for the redress of grievances. The contrary position espoused by the accusers of Oscar Stilley is clearly erroneous.

This Court in the past has granted certiorari on many cases based upon one or a few prior decisions. The federal sentencing guidelines litigation comes to mind. See e.g. *Mitchell v. U.S.* 546 U.S. 1000, 126 S.Ct. 634, 635 (U.S.2005); *Tugman v. U.S.*, 546 U.S. 930, 126 S.Ct. 410 (U.S. 2005).

In *Stutson v. United States*, 516 U.S. 193, 194, 116 S.Ct. 600 (1996) the Court said:

> Our per curiam opinion issued today in a civil case, *Lawrence v. Chater, ante*, p. 163, contains a general discussion of the considerations that properly influence this Court in deciding whether to grant a petition for certiorari, vacate the judgment below, and remand the case (GVR) for further consideration in light of potentially pertinent matters which it appears that the lower court may not have considered. Here, we apply that analysis to a criminal case, again finding that the particularities of the case before us merit a GVR.

Even though Justice Scalia dissented in the reversal in that case for reasons he explained, he

stated at 186 that:

> ... It is fully within our power to review this case, and any other case summarily decided below, by granting certiorari and proceeding to consider the merits; **or indeed, where the circumstances warrant, to summarily reverse.** Cf. Hellman, *"Granted, Vacated, and Remanded"-Shedding Light on a Dark Corner of Supreme Court Practice,* 67 Judicature 389, 391-392 (1984) (noting that in the 1970's as the Court's GVR practice "increased far beyond what it had been in earlier years," its use of summary reversal based on intervening precedents decreased dramatically).
> (Emphasis added) *Stutson v. U.S.* 516 U.S. 163, 186.

Serious and prejudicial errors are shown in the case below. The writ should be granted and Petitioner should be accorded such relief as this Court may deem just.

CONCLUSION

For the reasons set forth herein, Petitioner respectfully requests that the petition for writ of certiorari be granted.

Respectfully submitted,

Oscar Stilley, Attorney at law
701 S. 21st Street
Fort Smith, AR 72901
Pro se
479 573-0726 Phone
479 573-0647 Fax
oscar@oscarstilley.com email
Arkansas Bar # 91096

APPENDICES

APPENDIX A – Supreme Court of Arkansas Decision dated June 21, 2007 - Affirming Supreme Court Committee on Professional Conduct, Panel B Decision

IN THE SUPREME COURT OF ARKANSAS

No. 06-972

OSCAR STILLEY, APPELLANT,

VS.

SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT, APPELLEE;

Opinion Delivered June 21, 2007

APPEAL FROM THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT, PANEL B; DOCKET NO. CPC 2002-077

AFFIRMED.

DONALD L. CORBIN, Associate Justice

Appellant Oscar Stilley appeals from an order of the Supreme Court Committee on Professional Conduct (Committee) finding him in violation of four provisions of the Arkansas Model Rules of Professional Conduct (Model Rules), and suspending his license to practice law for six months. On appeal, Stilley raises

two arguments for reversal: the Committee erred in (1) permitting the sitting justices of the Arkansas Supreme Court to usurp the role of the Panel B Chair and to continue to sit and act on the Committee through the conclusion of the proceedings, depriving Stilley of witnesses and depositions, and depriving him of due process; and (2) imposing punishment for vague, undefined offenses for which there was no statutory or rule-based authorization, and for which this court had previously stated that no authority for punishment existed. As this case involves the discipline of an attorney, jurisdiction is pursuant to Ark. Sup. Ct. R. 1-2(a)(5). We find no error and affirm.

Facts

The facts leading up to the order at issue here arose from the decisions in *White v. Priest*, 348 Ark. 135, 73 S.W.3d 572 (2002) (*White I*) and *White v. Priest*, 348 Ark. 783, 73 S.W.3d 572 (2002) (per curiam) (*White II*). In *White I*, this court granted review of Counts 1 and 2 of White's complaint and dismissed Counts 3, 4, 5, 6, and 7. We also issued a show cause order for Stilley, White's counsel, to show in writing why a sanction under Ark. R. App. P.–Civ. 11 should not be imposed against him. Stilley then filed a seventy-page brief which requested reconsideration, reinstatement of the complaint, and recusal of the justices. In *White II*, we issued a per curiam order, which struck Stilley's brief, in its entirety, from the files of this court, and referred him to the Committee for such action as the Committee believed warranted under the Model Rules. Specifically, this court held that "Stilley's pleadings,

motion, and argument constitute a clear violation of Ark. R. App. P.–Civ. 11" and set out twelve examples of Stilley's remarks that demonstrated "the general tone of disrespect for the code of ethics and Mr. Stilley's breach of his oath of office as an attorney-at-law" present throughout Stilley's brief. *White II*, 348 Ark. at 785, 787, 73 S.W.3d at 579, 581.

On July 16, 2002, the Office of Professional Conduct (Office) served a formal complaint on Stilley alleging that his conduct violated Model Rules 1.1, 1.2(a), 1.4(b), 1.7(b), 3.1, 3.4(c), and 8.4(d). Stilley denied that his conduct violated the Model Rules because he "did not use strident, intemperate, or disrespectful language"and argued that the complaint should be dismissed. The matter went to a ballot vote before Panel A of the Committee, and its confidential decision was sent to Stilley in a November 19, 2002 letter, which included Panel A's findings and order. Following receipt of Panel A's findings and order, Stilley timely requested a public hearing before Panel B.[1]

Prior to his public hearing, Stilley sought to take the depositions of the then-sitting justices of this court. Pursuant to his request, the Office issued subpoenas to the justices. On February 14, 2003, this court sent a letter to the Office, which stated some of Stilley's previous allegations against the court and pointed out that the proceeding before the Committee

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[1] The request for this public hearing consequently rendered Panel A's findings and order void.

stemmed from the *White* decisions, such that this court could only conclude that "Mr. Stilley is again taking issue with this court's opinions." Furthermore, this court quashed the subpoenas, explicitly stating:

> In addition, we direct your attention to Ark. Code Ann. § 25-19-105(b)(7) Repl. 2002), which provides that "unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals Judges, and the Attorney General shall not be deemed to be made open to the public." *See also McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 900 (1989). We conclude that it would be seriously improper for any court members to offer further explanation of the court's deliberation when reaching a final decision. All published opinions speak for themselves.
>
> For the reasons above, we must conclude that Mr. Stilley obviously has the wrong forum and his request for subpoenas in his Professional Conduct Committee proceeding is improper. Therefore, we request and direct the subpoenas to be quashed. *See* Ark. Code Ann. § 25-19-105(b)(8) (Documents which are protected from disclosure by order or rule of court).

Stilley responded to the February 14 letter requesting answers to some questions he had and for a determination of legal questions. On January 7, 2005, the Panel B Chair issued an order denying

Stilley's motion.[2] On April 7, 2005, an order was entered resetting Stilley's public hearing for October 21, 2005.

Following the order resetting his hearing, Stilley filed a motion for specific findings concerning rights to determinations by the tribunal and findings concerning the identity of the tribunal. On January 19, 2006, Panel B issued an order denying Stilley's motion and again resetting his public hearing, this time for April 21, 2006.

On April 21, 2006, a public hearing was held on the complaint filed against Stilley. At the conclusion of the hearing, Panel B found Stilley in violation of four provisions of the Model Rules and suspended his law license for six months. Following this oral ruling, Stilley expressed his desire to appeal the ruling and, on April 29, 2006, filed a corrected motion for stay. On May 4, 2006, the Committee issued its findings and order. Specifically, the Committee unanimously found

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It should also be noted that between the time of Stilley's February 19, 2003 response and Panel B's January 7, 2005 letter, Stilley sued the Arkansas Supreme Court justices in federal district court seeking money damages, declaratory and injunctive relief, including a directive to require the justices to submit to Stilley's depositions in the present case. *See Stilley v. Thornton*, No. 03-CV-965 (E.D. Ark. 2004). The district court dismissed Stilley's action against the justices, and this dismissal was affirmed by the Eighth Circuit Court of Appeals. *See Stilley v. Dickey*, 117 Fed. Appx. 492 (2005). Following the Eight Circuit's decision, Stilley petitioned for certiorari to the United States Supreme Court, which denied his petition. *See Stilley v. Dickey*, 126 S. Ct. 341 (2005).

that Stilley's conduct violated Model Rules 1.7(b), 3.1, 3.4(c), and 8.4(d). That same day, the Committee issued an order granting Stilley's motion for stay pending appeal.

On May 18, 2006, Stilley filed a motion for findings of fact, conclusions of law, reconsideration, new trial, and other relief, pursuant to Ark. R. Civ. P. 52(b), or 59(a). In its June 2, 2006 order, entered nunc pro tunc June 6, 2006, the Committee explained that the Arkansas Rules of Civil Procedure are not applicable to proceedings before it and denied Stilley's motions. This appeal followed.

Standard of Review

Recently, in *Walker v. Supreme Court Committee on Professional Conduct*, 368 Ark. 357, ___ S.W.3d ___ (2007), we reiterated the fixed standard of review for an appeal from the Committee:

> Pursuant to Section 12(B) of the Procedures, on appeal, this court carries out a *de novo* review on the record. *Lewellen v. Sup. Ct. Comm. on Prof'l Conduct*, 353 Ark. 641, 110 S.W.3d 263 (2003). A *de novo* review on the record determines whether the factual findings were clearly erroneous, or whether the result reached was arbitrary or groundless. *Id.* Due deference is given to the Committee's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony. *Colvin v. Comm. on Prof'l Conduct*, 309 Ark. 592, 832 S.W.2d 246 (1992); *see also Neal v.*

> *Matthews*, 342 Ark. 566, 30 S.W.3d 92 (2000). However, conclusions of law are given no deference on appeal. *See Montgomery v. Bolton*, 349 Ark. 460, 79 S.W.3d 354 (2002). The Committee's findings of fact will not be reversed unless the findings are clearly erroneous, and the action taken by the Committee will be affirmed unless it is clearly against the preponderance of the evidence. *Fink v. Neal*, 328 Ark. 646, 945 S.W.2d 916 (1997).

Id. at 362, ___ S.W.3d at ___ (quoting *Comm. on Prof'l Conduct v. Revels*, 360 Ark. 69, 72-73, 199 S.W.3d 630, 631-32 (2004)). Additionally, a finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Id.*

Before examining Stilley's arguments, we would like to point out that he has not challenged, under either the United States or the Arkansas Constitutions or our rules, the magnitude of the actual penalty he received following the Committee's finding that he violated four provisions of the Model Rules. Rather, Stilley's appeal focuses on the process and his belief that the justices of this court are acting as his "accusers" and judges, as well as his belief that his conduct could not be the basis for punishment.[3]

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Prior to addressing his enumerated points of appeal, Stilley provides us with an overview of the charges against him and the Committee's findings. Also in this section, Stilley asks how

Recusal and Due Process

Stilley's first argument for reversal is that the Committee erred in permitting the sitting to sit and

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we are going to rule upon the allegations when they concern a document, his stricken seventy-page brief, which is not part of the record. However, this argument is not well taken because, at his public hearing, the Committee noted that *White II*, 348 Ark. 783, 73 S.W.3d 572, contained examples that led to the complaint being filed against Stilley. Stark Ligon, the Executive Director of the Committee, in his opening statement to Panel B stated:

> I did not make the 70-page stricken brief a part of our complaint for two reasons, one, not to put 70 extra pages in the record, and also on the theory that the Court selected the examples that the Court felt led to the referral here, and that to add anything more was probably circumstantial.

A review of the hearing reveals that Stilley did not object to the brief not being part of the record nor did he attempt to have the brief made part of the record. It is an elementary principle of administrative law that an issue must be raised at the hearing below in order to be raised on appeal. *See Mid-South Rd. Builders, Inc. v. Arkansas Contractors Licensing Bd.*, 328 Ark. 630, 946 S.W.2d 649 (1997). Furthermore, it is clear that the Committee based its findings and the subsequent suspension of Stilley's law license on (1) the arguments of counsel at the hearing; (2) the complaint and exhibits filed by the Committee, which included *White II*; and (3) Stilley's response to the complaint and his exhibits filed of record. Thus, the Committee's decision was based upon what was before it and that is the same record we will now review.

act on the Committee, depriving Stilley of witnesses and depositions, and depriving him of due process. Essentially, Stilley's argument is that the justices of this court should have recused from this case because (1) the justices are Stilley's "accusers" and they have an interest in the outcome; and (2) due process is violated when a judicial officer presides over a case, alone or with others, where the judicial officer has an interest in the outcome.

a. Recusal

Stilley first claims that, because of this court's letter order quashing his deposition requests, each of the justices[4] has refused to recuse from a decision stemming from "their own accusations," and they have usurped the role of the Panel B Chair. This argument is simply not true.

The present case is an appeal of a disciplinary action taken by the Committee against Stilley, following our decision in *White II*, 348 Ark. 783, 73 S.W.3d 572, to refer Stilley to the Committee based upon his conduct in that case. After this referral, this court did not have, nor did it play, a role in the action taken against Stilley. Specifically, we have granted our authority to regulate the Arkansas legal profession to the Committee. *See Cambiano v. Neal*, 342 Ark. 691,

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[4] Stilley specifically refers to current Chief Justice Hannah, current Justices Glaze, Corbin, Brown, and Imber, and former Chief Justice Arnold and Justice Thornton.

35 S.W.3d 792 (2000). In *Hogue v. Neal*, 340 Ark. 250, 12 S.W.3d 186 (2000) (per curiam), we explained that it is the Executive Director of the Committee who determines if a complaint should be processed. Thus, even though this court's referral of Stilley to the Committee was treated as a formal complaint, pursuant to Section 5(A) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (Procedures), it was the Executive Director's decision on whether to proceed and process the complaint. In this case, Director Stark Ligon felt that the complaint had merit and followed the proper regulations in proceeding against Stilley.

Additionally, the justices of this court have no interest in the outcome of this case. This is an appeal from a disciplinary action *against Stilley*, not against the justices. None of the justices were present at Stilley's public hearing, and, as the Panel B Chair stated at the hearing, "[T]he justices have no involvement. The only people who have any involvement in this proceeding would be the Office of Professional Conduct and the hearing panel." Furthermore, at the hearing, Director Ligon pointed out that "the only way the Arkansas Supreme Court would ever have anything to do with this case would be if there was an appeal from whatever decision might occur with this panel they've got docketed in the Arkansas Supreme Court as an appeal." That is exactly what has happened, as this appeal of the *disciplinary action* is now before this court.

Lastly, it should be noted that Stilley is reviving his attempt to have the justices of this court recuse,

seemingly, from all cases involving him. In making his argument that the justices are his "accusers" and have an interest in the outcome of this case, Stilley rehashes the history of his prior cases, *Kurrus v. Priest*, 342 Ark. 434, 29 S.W.3d 669 (2000), *White I*, 348 Ark. 135, 73 S.W.3d 572, and *White II*, 348 Ark. 783, 73 S.W.3d 572. Simply put, Stilley is renewing his long-standing argument that he disagrees with this court's decisions in cases he believes he should have won. Just as this court pointed out in *White I*, recusal is simply not appropriate nor warranted in this case. *See White I*, 348 Ark. at 142, 73 S.W.3d at 575 (discussing White's motion for recusal, filed by Stilley, and stating "each justice, individually, rejects White's motion to recuse under the 'rule of necessity'").

b. Due process

The second subsection of Stilley's first argument for reversal is that due process is violated when a judicial officer presides over a case, alone or with others, where the judicial officer has an interest in the outcome.

First, in support of this assertion, Stilley claims that this court's decision in *White II*, 348 Ark. 783, 73 S.W.3d 572, "trampled upon well established law and furthermore essentially made up the rules for that proceeding and no other proceeding." Continuing upon this line of reasoning and his argument that the justices have an interest in the outcome of this case, Stilley claims that "[t]he stated justices, as accusers in *White v. Priest* and usurpers in CPC 2002-077, have unquestionably placed themselves in the position of

being the judges on their own accusations. . . . such that there is no suitable remedy other than reversal." As stated above, this argument is without merit as the justices do not have an interest in the outcome of this case and recusal is not warranted.

Second, Stilley claims that, because the justices of this court, as his "accusers," usurped the role of the Panel B Chair, his due-process rights were clearly violated since he was denied the right to cross-examine his own "accusers." He also claims that the proceedings before the Committee clearly fell far below the minimum requirements of due process. This argument is flawed and reversal is not warranted due to Stilley's alleged due-process violation.

We have held that a party appearing before an administrative agency is entitled to due process in the proceedings. *See C.C.B. v. Arkansas Dep't of Human Servs.*, 368 Ark. 540, ___ S.W.3d ___ (2007). A fair trial by a fair tribunal is a basic requirement of due process. *Id.* We have also held that an appellant, in attacking an administrative procedure on the basis of a denial of due process, has the burden of proving its invalidity. *Id.* In cases involving the discipline of attorneys, the attorney is entitled to procedural due process, which includes fair notice of the charge. *In re Ruffalo*, 390 U.S. 544 (1968). Additionally, this court has repeatedly held that the practice of law is a privilege, not a right. *See Ligon v. Newman*, 365 Ark. 510, ___ S.W.3d ___ (2006); *Cambiano*, 342 Ark. 691, 35 S.W.3d 792. Moreover, "any protections to a law license are only subject to the very lowest of review under the Due Process and Equal Protections Clauses of the

Constitution." *Id.* at 703, 35 S.W.3d at 799.

As stated multiple times, the present case is an appeal from the Committee's decision to suspend Stilley's license to practice law for six months. Thus, Stilley is required to prove that this *decision* was invalid due to a violation of his due-process rights. He fails to meet this burden. Specifically, there was no due-process right violated when Stilley (1) received notice of the complaint and charges against him, (2) was notified of Panel A's decision, (3) requested and received a public hearing before Panel B, (4) attended the hearing, at which he represented himself, and (5) was allowed to present evidence on his behalf.[5]

A reversal of the Committee's decision is not warranted because (1) the justices of this court did not have an interest in the outcome of this case, (2) the justices did not usurp the role of Panel B's Chair, and (3) Stilley's due-process rights were not violated.

Basis of Punishment

Stilley's second argument for reversal is that the Committee erred in imposing punishment for vague, undefined offenses for which there was no statutory or rule-based authorization, and for which this court had

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Despite Stilley's argument to the contrary, he was entitled to present evidence on his behalf, i.e., Robert White's affidavit. The only thing that he was denied was his request to take the depositions of the justices of this court, which was properly denied pursuant to section 25-19-105(b)(8).

previously stated that no authority for punishment existed. Specifically, Stilley contends that the speech for which he was punished, the stricken seventy-page brief, could not be a basis for his punishment because: (1) pursuant to *Perryman v. Hackler*, 323 Ark. 500, 916 S.W.2d 105 (1996), an attorney can only be sanctioned for disrespectful comments made in a brief when they are directed at the trial court; (2) it was a privileged communication under Arkansas law; and (3) even if his conduct was prohibited, he was entitled to clear rules and notice that his speech could form the basis for punishment.

Arkansas Supreme Court Rule 1-5 states: "No argument, brief, or motion filed or made in the Court shall contain language showing disrespect for the circuit court." This court repeatedly has expressed a displeasure with attorneys who have directed disrespectful language toward courts and officers of the court. *See Ligon v. McCullough*, 368 Ark. 598, ___ S.W.3d ___ (2007) (per curiam) (striking defendant's brief due to disrespectful and unnecessary language directed at the Executive Director of the Committee); *Cox v State*, 365 Ark. 358, ___ S.W.3d ___ (2006) (striking a sentence from the appellant's brief due to contemptuous and disrespectful language directed at the trial court); *Davenport v. Lee*, 349 Ark. 113, 115, 76 S.W.3d 265, 266 (2002) (per curiam) (holding that "[j]ust as we will not allow a lawyer to show disrespect for the judges sitting in circuit courts, we will not allow an attorney to show disrespect for the members of this court"); *White II*, 348 Ark. 783, 73 S.W.3d 572 (striking petitioner's brief seeking recusal of all the justices of this court based upon the petitioner's

attorney's continued strident disrespectful language used in his pleadings, motions, and arguments, and his repeated refusal to recognize and adhere to precedent); *Henry v. Eberhard*, 309 Ark. 336, 832 S.W.2d 467 (1992) (striking portion of the appellant's brief containing offensive, inflammatory, and disrespectful language to the trial court); *McLemore v. Elliott*, 272 Ark. 306, 614 S.W.2d 226 (1981) (striking appellant's brief due to disrespectful and distasteful language directed at the trial judge). Furthermore, we have "caution[ed] attorneys from filing motions containing irrelevant, disrespectful, and caustic remarks that only serve to vent a party's emotions such as anger or hostility." *Ligon*, 368 Ark. at 599, ___ S.W.3d at ___.

It is clear from this case law that briefs containing disrespectful language directed not only at the trial court, but also disrespectful language toward courts and officers of the court is not tolerated. Simply put, "this court expects the members of the bar to fulfill their professional responsibilities, while still maintaining the highest standards of ethical conduct." *Davenport*, 349 Ark. at 115, 76 S.W.3d at 266. Moreover, in some instances, we have referred the offending attorney to the Committee because the matter implicated a breach of the Model Rules. *See Ligon*, 368 Ark. 598, ___ S.W.3d___; *Davenport*, 349 Ark. 113, 76 S.W.3d 265; *White II*, 348 Ark. 783, 73 S.W.3d 572.

Additionally, and despite Stilley's argument to the contrary, there is not a contradiction in our case law between *Perryman* and the other "disrespectful language" cases. In *Perryman*, the appellee accused

the appellants of libel regarding "fruits of the crime" statements made in their brief. *Perryman*, 323 Ark. at 505, 916 S.W.2d at 107. There, the appellee did not cite to any authority in support of his argument that this court could impose any sanctions on the appellants concerning the contents of their brief, and we held that the only authority to sanction comments in the brief were when those comments were directed at the trial court. It is clear that *Perryman* is completely distinguishable as it involved allegedly libelous language directed at an appellee, rather than at a court or an officer of the court. Thus, in this case, it was within this court's power to recommend Stilley to the Committee based upon his disrespectful language toward this court, and it was within the Committee's power to determine whether or not Stilley's conduct violated any of the Model Rules.

Moreover, Stilley is incorrect in his assertion that the seventy-page brief was a privileged communication. To support this argument, Stilley relies upon *Howard v. Ward*, 238 Ark. 514, 383 S.W.2d 107 (1964), a case that involved the issues of libel and slander. There, we upheld as absolutely privileged certain language contained in a motion to dismiss that characterized as false and libelous letters written to the husband's commanding officer charging the husband with sex perversion and threatening prosecution for child abandonment. This is completely distinguishable from the present case. Here, Stilley was found to have violated four provisions of the Model Rules based upon language he used in a brief filed with this court that was disrespectful toward an Arkansas court of law. This is prohibited by our rules.

See Ark. Sup. Ct. R. 1-5. Moreover, this rule has been repeatedly upheld to prohibit disrespectful language directed at both courts and officers of the court.

Lastly, Stilley was not "deprived of any notice whatsoever of the thing prohibited." Rather, Rule 1-5 and our case law gave him more than enough notice that his conduct was not allowed. Furthermore, the oath Stilley took when he received his attorney's license, and that is inscribed on that license, specifically states:

> I will exhibit, and I will seek to maintain in others, the respect due courts and judges.
>
> I will, to the best of my ability, abide by the Model Rules of Professional Conduct and any other standards of ethics proclaimed by the courts, and in doubtful cases I will attempt to abide by the spirit of those ethical rules and precepts of honor and fair play.

Based upon the foregoing, it is clear that the Committee did not err in its decision to punish Stilley.

Serious Misconduct

At the close of its brief, the Committee raises a separate issue than those raised by Stilley. Specifically, the Committee argues that, if this court affirms the Committee's decision, then the suspension imposed on Stilley must be considered "serious misconduct," under the rule announced in *Gillaspie v. Ligon*, 357 Ark. 50, 160 S.W.3d 332 (2004), and

hereafter use by an attorney of intemperate, strident, and disrespectful language in written submissions to courts will be eligible for the full range of sanctions for either "serious misconduct" or "lesser misconduct," under the Procedures.

Section 17(B) of the Procedures explains in part:

> Serious misconduct is conduct in violation of the Model Rules that would warrant a sanction terminating or restricting the lawyer's license to practice law. Conduct will be considered serious misconduct if any of the following considerations apply:
>
> . . . .
>
> (2) The misconduct results in or is likely to result in substantial prejudice to a client or other person[.]

Section 17(C) of the Procedures further explains that "[l]esser misconduct is conduct in violation of the Model Rules that would not warrant a sanction terminating or restricting the lawyer's license to practice law." Thus, only serious misconduct can be the basis for restricting the practice of law. *See* P. Reg. Prof'l Conduct § 17(E)(2); *Gillaspie*, 357 Ark. 50, 160 S.W.3d 332.

As an initial point, the use of disrespectful language toward a court or officer of the court is not in and of itself serious misconduct, as defined by Section 17(B). However, in this case, Stilley's repeated and continuous use of strident disrespectful language constituted serious misconduct. Specifically, Stilley

engaged in misconduct that resulted in substantial prejudice to a client. *See* P. Reg. Prof'l Conduct § 17(B)(2).

Additional support for the conclusion that Stilley's conduct constituted serious misconduct can be found in examining the Model Rules Stilley violated. For example, the Committee concluded that Stilley violated Model Rule 1.7(b) when he placed his own interests as an attorney in conflict with the interests of his client in this matter. In support of this conclusion, the Committee cited to the stricken brief and Stilley's belief that:

> over a ten year period the Court had ruled against him five times, and that he was entitled to an opportunity to confront and interrogate the Court about its perceived hostility toward him, possibly as part of an effort by him to get the justices to recuse from this case and maybe future ones.[6]

Another example is the Committee's finding that Stilley violated Model Rule 8.4(d) because his conduct:

6

Although Stilley offered the Committee two affidavits from his client Robert White showing that (1) White did not object to Stilley's brief and statement, and (2) White would have used "considerably stronger language," Stilley was expected to behave in accordance with the Model Rules and Rule 1-5 regarding disrespectful language contained in a filed brief.

> caused his client's brief to be entirely stricken from the record, delaying proper and full consideration of his client's cause, and causing the Court to expend additional resources and time in considering his brief and then entering an order striking it from the record of the case.

Thus, it is abundantly clear that Stilley's conduct in using disrespectful language toward this court, causing his client's brief to be struck in its entirety, resulted in substantial prejudice to his client. Because Stilley's conduct is "serious misconduct" under Section 17(B), his six-month suspension is upheld.

Affirmed.

APPENDIX B – Arkansas Supreme Court Decision Letter dated February 8, 2007 - Correcting Caption, Denying Motion for Recusal and Hearing for Same, and Denying Motion for Certiorari, Prohibition, Mandamus, and for Other Relief, and Re-briefing

Office of the Clerk
Supreme Court of the State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

February 8, 2007

Oscar Stilley
Attorney at Law
701 S. 21st Street
Fort Smith, AR 72901

RE: 06-972. Oscar Stilley v. Stark Ligon, as Executive Director of the Arkansas Supreme Court Committee on Professional Conduct

Dear Mr. Stilley:

The Arkansas Supreme Court issued the following orders today in the above styled case:

"Appellant's motion to file belated brief is granted."

"Appellant's motion to correct caption is granted"

"Appellant's motion for recusal with conditional demand for hearing. Chief Justice Jim Hannah, Justice Tom Glaze, Justice Donald L. Corbin, Justice Robert L. Brown, Justice Annabelle Clinton Imber, and Justice Jim Gunter would decline suggestion of recusal.

"Petition for certiorari, mandamus, prohibition, or other relief, and for rebriefing. Petition denied."

Appellant's brief filed this date; appellee's brief due by March 10, 2007.

Sincerely,

Leslie W. Steen, Clerk
LWS:jko
cc: Stark Ligon

APPENDIX C – Arkansas Supreme Court Committee on Professional Conduct (Panel B) Findings and Order dated May 4, 2006

BEFORE THE ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT PANEL B

IN RE: **OSCAR STILLEY**
Arkansas Bar ID #91096
CPC Docket No. 2002-077

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information referred to the Committee by the Arkansas Supreme Court by Per Curiam Order on May 17, 2002, in No. 02-284, *Robert White v. Sharon Priest et al.*. The information related to the representation of Robert White by Respondent Oscar Stilley of Fort Smith in 2002. In the Per Curiam Order the Court struck the entire seventy-page brief Mr. Stilley had filed in the case in response to a "show cause" order the Court issued against him. The Per Curiam Order cited twelve (12) specific examples of remarks that the Court found to be strident, disrespectful, intemperate, and distasteful language, and also cited his repeated refusal to recognize and adhere to precedent.

Respondent was served with a formal complaint, supported by the Per Curiam Order of May 17, 2002, and filed his response. After a ballot vote by Panel A in

November 2002, Respondent requested a public hearing. After various motions and efforts at discovery, which included his attempt to subpoena the members of the Court for depositions, Mr. Stilley filed suit December 8, 2003, No. 03-CV-695, against the Court seeking relief in federal court. The federal court dismissed his complaint on March 23, 2004. He appealed a dismissal of his action to the Eighth Circuit Court of Appeals, in No. 04-2172, which affirmed the trial court in January 2005. Mr. Stilley's petition for certiorari to the United States Supreme Court, No. 04-1521, was denied in October 2005.

Mr. Stilley denied his brief was disrespectful of the Court or that he had improperly argued for the over-ruling of precedent. He presented affidavits with his response and at the hearing from his client, Mr. White, that White was fully informed of Stilley's action in filing the brief in question and that White concurred then in filing the brief and still held that position at the time of the hearing.

The public hearing was conducted April 21, 2006, before Committee Panel B. Reserve Committee attorney member Joe Polk of Little Rock substituted for regular Panel B attorney member Michael Cogbill of Fort Smith who recused on the case.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, exhibits introduced into the record (there were no witnesses presented), and arguments of counsel, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas

Supreme Court Committee on Professional Conduct finds:

1. Mr. Stilley's conduct did not violate Model Rule 1.1.

2. Mr. Stilley's conduct did not violate Model Rule 1.2(a).

3. Mr. Stilley's conduct did not violate Model Rule 1.4(b).

4. By a unanimous vote that Mr. Stilley's conduct violated Model Rule 1.7(b) when he stated in his offending brief his belief that over a ten year period the Court had ruled against him five times, and that he was entitled to an opportunity to confront and interrogate the Court about its perceived hostility toward him, possibly as part of an effort by him to get the justices to recuse from this case and maybe future ones. By his conduct, he placed his own interests as an attorney in conflict with the interests of his client in this matter. Model Rule 1.7(b) provides that a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation.

5. By a unanimous vote that Mr. Stilley's conduct violated Model Rule 3.1, in that the Arkansas Supreme Court found his brief to be a clear violation of Ark. R. App. P. - Civ. 11, in that it showed his

dissatisfaction with earlier opinions of the Court with which he disagreed, and that his brief, in revisiting these prior cases, offered nothing new showing the precedential value of those opinions should be reversed. Model Rule 3.1 provides that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

6. By a unanimous vote that Mr. Stilley's conduct violated Model Rule 3.4(c), in that

> 1. The Court found his conduct, in filing this brief with its intemperate and disrespectful contents to the Court, to constitute a breach of the obligation of his oath of office as an attorney-at-law, due to his general tone of disrespect for the code of ethics.
>
> 2. The Court found his brief to be a clear violation of Ark. R. App. P. - Civ. 11, in that it showed his dissatisfaction with earlier opinions of the Court with which he disagreed, and that his brief, in revisiting these prior cases, offered nothing new showing the precedential value of those opinions should be reversed.

Model Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

7. By a unanimous vote that Mr. Stilley's conduct violated Model Rule 8.4(d) in that his conduct caused his client's brief to be entirely stricken from the record, delaying proper and full consideration of his client's cause, and causing the Court to expend additional resources and time in considering his brief and then entering an order striking it from the record of the case. Model Rule 8.4(d) requires that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that the privilege to practice law of Oscar Stilley, Arkansas Bar ID# 91096, by a vote of 4-3, be, and hereby is, suspended for six (6) months for his conduct in this matter. He is also ordered to pay Committee case costs of $50.00 and a court reporter's fee for the hearing of $100.00, totaling $150.00, in this matter. Panel members Moore, Hodges, Orton, and Polk voted for the suspension. Panel members Kelly, Rush, and Word voted for a reprimand. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. The costs of $150.00 assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. At the conclusion of the hearing, Respondent was advised by the Executive Director of his right to appeal this decision to the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL B

By: /s/ Harry Truman Moore
Harry Truman Moore, Chair, Panel B

Date: 5-04-06

APPENDIX D – Supreme Court Committee on Professional Conduct Order dated June 12, 2006 - Denying Motions for Finding of Fact and Conclusions of Law, Reconsideration, New Trial or Other Relief and Motion for Determination of the Effect of Filing the Motion

BEFORE THE ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT PANEL B

IN RE: **OSCAR STILLEY**
Arkansas Bar ID #91096
CPC Docket No. 2002-077

ORDER DENYING MOTION FOR FINDINGS OF FACT, CONCLUSIONS OF LAW, RECONSIDERATION, NEW TRIAL AND OTHER RELIEF, PURSUANT TO ARCP 52(b), 59(a), OR OTHER MOTION TO VACATE, ALTER, OR AMEND THE JUDGMENT MADE NO LATER THAN TEN DAYS AFTER JUDGMENT
and MOTION FOR DETERMINATION OF THE EFFECT OF FILING A MOTION FOR FINDINGS OF FACT, CONCLUSIONS OF LAW, RECONSIDERATION, NEW TRIAL AND OTHER RELIEF, PURSUANT TO ARCP 52(b), 59(A), OR OTHER MOTION TO VACE, ALTER, OR AMENT THE JUDGMENT MADE NO LATER THAN TEN DAYS AFTER JUDGMENT

Having considered Respondent Stilley's above-named Motions, both filed May 18, 2006, and the Response to it filed by the Office of Professional

Conduct, the undersigned Chair of Committee Panel B finds:

1. The Arkansas Rules of Civil Procedure are not applicable to proceedings before the Committee under the Court's Committee rules (Procedures).

2. The Committee cannot create any Procedures other than those promulgated by the Arkansas Supreme Court.

3. Both Motion are denied.

4. The Panel's Order on the hearing in this matter was filed May 4, 2006, and any Notice of Appeal must be filed within thirty (30) days of that time.

IT IS SO ORDERED on June 2, 2006.

/s/ Harry Truman Moore
Harry Truman Moore, Panel B Chair
Prepared by Stark Ligon, ABR 75077

APPENDIX E – Arkansas Supreme Court Committee on Professional Conduct Order dated January 19, 2006 - Denying Motion for Specific Findings Concerning Rights and Determinations by the Tribunal

BEFORE THE ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT PANEL B

IN RE: **OSCAR STILLEY**
Arkansas Bar ID #91096
CPC Docket No. 2002-077

ORDER

On August 17, 2005, the respondent filed his Motion for Specific Findings Concerning Rights and Determinations by the Tribunal, and Findings Concerning the Identity of the Tribunal. The staff of the committee, through its executive director, Stark Ligon, filed its response.

In his motion, the movant, Mr. Stilley, set out his request for a "determination as to the nature and extent of his rights before the committee," as well as a "statement of the actual procedures which will be followed in this case, and the rights which will be accorded to the respondent."

After considering the motion and response, the chair of Panel B finds:

1. Neither this committee, nor its staff, is

authorized to and will not issue advisory opinions.

2. The chair has reviewed the response as filed on behalf of the committee to the eight "specific questions" as set forth by Mr. Stilley in his motion. The chair finds that the information in the answers to movant's questions one through six accurately sets forth a correct recitation of applicable committee procedure and specific information concerning the individuals on the panel who have served as chairs and vice-chairs of the panel during the pendency of this matter.

3. The chair also find that the committee's response should be supplemented to reflect that for the calendar year 2006, the chair of Panel B is Harry Truman Moore, and the vice-chair of Panel B is John Rush.

4 With respect to Question No. 7, the chair finds that the response to Question No. 6 was not an affirmative answer but merely set forth information taken directly form the court's Procedure Regulating Professional Conduct of Attorneys at Law. Said procedures do not set forth a time for the entry of a finding of fact and conclusions of law and it is not within the purview of the chair to establish procedures. That authority

is strictly within the purview of the Arkansas Supreme Court.

5. With respect to Question No. 8, the chair finds that the question seeks an advisory opinion which is neither this chair, nor this panel, nor the committee's staff, is authorized by law to issue.

6. Hence, the respondent's motion is denied.

7. The discovery cut-off for further proceedings is hereby established as March 20, 2006. This matter is hereby reset for public hearing on April 21, 2006.

[Not dated, but docket indicates January 19, 2006]

/s/ Harry Truman Moore
Harry Truman Moore, Panel B Chair

APPENDIX F – Arkansas Supreme Court Committee on Professional Conduct Order dated January 06, 2005 - Denying Motion to Strike Order Purporting to Grant Motion to Quash

BEFORE THE ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT PANEL B

IN RE: **OSCAR STILLEY**
Arkansas Bar ID #91096
CPC Docket No. 2002-077

ORDER DENYING RESPONDENT'S MOTION TO STRIKE ORDER PURPORTING TO GRANT MOTION TO QUASH

The undersigned, the Panel B Vice Chair in 2005, acting as Panel B Chair in this case upon the recusal of the regular Panel B Chair, J. Michael Cogbill, from this case, finds as follows:

1. Based upon my review of the documents and pleadings listed in my letter dated January 4, 2005, to the Executive Director, and copied to Respondent Stilley, a copy of said letter being attached hereto and incorporated herein, Respondent's "Motion to Strike Order Purporting to Grant Motion to quash," filed with the Committee on February 19, 2003, is denied.

2. This case is removed from the Panel B agenda for hearing on February 18, 2005, and will remain removed from the Committee calendar pending further notification from Respondent Stilley or the

Executive Director, or both, suggesting the case is ready to be reset for hearing before Panel B.

IT IS SO ORDERED on January 6, 2005.

/s/ Harry Truman Moore
Harry Truman Moore,
Acting Panel B Chair for this case

Order prepared by:
Stark Ligon, Executive Director
Office of Professional Conduct
501-376-0313

APPENDIX G – Arkansas Supreme Court Letter Order dated February 14, 2003 - Quashing Subpoenas

SUPREME COURT OF ARKANSAS
Justice Building
625 Marshall Street
Little Rock, AR 72201

February 14, 2003

Mr. Stark Ligon
Office of Professional Conduct
625 Marshall Street
Little Rock, AR 72201

Dear Mr. Ligon:

We acknowledge receipt of the subpoenas you issued at Mr. Oscar Stilley's request seeking each Justice's deposition. As a point of information, Mr. Stilley had filed an earlier complaint regarding the members of this court with the Judicial Discipline & Disability Commission. That complaint was dismissed by the Commission on January 17, 2003. In the letter, the Commission found allegations dealing with judicial acts or the correctness of judicial rulings were outside the Commission's jurisdiction, and, in addition, it found there was insufficient evidence to prove the remaining allegations made by Mr. Stilley.

We also would point out that in the proceeding before the Commission, Mr. Stilley vehemently disagreed with our decision in *White v. Priest,* 348 Ark.

135, ____ S.W.2d ___(2002). He petitioned for a writ of certiorari in the United States Supreme Court, which the Court denied on October 15, 2002. We can only conclude that Mr. Stilley is again taking issue with this court's opinions.

In addition, we direct your attention to Ark. Code Ann. § 25-19-105(b)(7) (Repl. 2002), which provides that "unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals Judges, and the Attorney General shall not be deemed to be made open to the public." *See also McCambridge v. City of Little Rock*, 298 Ark. 219, 766S.W.2d 900 (1989). We conclude that it would be seriously improper for any court members to offer further explanation of the court's deliberation when reaching a final decision. All published opinions speak for themselves.

For the reasons above, we must conclude that Mr. Stilley obviously has the wrong forum and his request for subpoenas in his Professional Conduct Committee proceeding is improper. Therefore, we request and direct the subpoenas be quashed. *See* Ark. Code Ann. § 25-19-105(b)(8) (Documents which are protected from disclosure by order or rule of court).

Sincerely,

/s/ Chief Justice W. H. "Dub" Arnold
Chief Justice W. H. "Dub" Arnold

/s/ Justice Tom Glaze

Justice Tom Glaze

/s/ Justice Donald E. Corbin
Justice Donald E. Corbin

/s/ Justice Annabelle Clinton Imber
Justice Annabelle Clinton Imber

/s/ Justice Jim Hannah
Justice Jim Hannah

/s/ Justice Robert L. Brown
Justice Robert L. Brown

/s/ Justice Ray Thornton
Justice Ray Thornton

APPENDIX H – Arkansas Supreme Court Committee on Professional Conduct (Panel A) Order dated November 19, 2002 - Judgment Imposing Three Month Suspension, Fine, and Costs

BEFORE THE ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT PANEL A

IN RE: **OSCAR STILLEY**
Arkansas Bar ID #91096
CPC Docket No. 2002-077

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information referred to the Committee by the Arkansas Supreme Court Per Curiam on May 17, 2002. The information related to the representation of Robert White by Respondent in 2002. Respondent was served with a formal complaint, supported by the Per Curiam of May 17, 2002.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Mr. Stilley's conduct violated Model Rule 1.1, through his use of strident, intemperate, disrespectful

language, and repeated refusal to recognize and adhere to precedent throughout his client's 70-page brief, which caused the entire brief to be stricken by the Court. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. Mr. Stilley's conduct violated Model Rule 1.7(b) when he stated in his offending brief his belief that over a ten year period the Court had ruled against him five times, and that he was entitled an opportunity to confront and interrogate the Court about its perceived hostility toward him, possibly as part of an effort by him to get the justices to recuse from this case and maybe future ones. By his conduct, he placed his own interests as an attorney in conflict with the interests of his client in this matter, with no evidence that his client here was consulted on this issue or consented to the nature of his brief after any such consultation. Model Rule 1.7(b) provides that a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation.

3. Mr. Stilley's conduct violated Model Rule 3.4(C), in that:

1. The Court found his conduct in filing

this brief, with its intemperate and disrespectful contents, to constitute a breach of the obligation of his oath of office as an attorney-at-law, due to his general tone of disrespect for the code of ethics.

2. The Court found his brief to be a clear violation of Ark. R. App. P. - Civ. 11, in that it showed his dissatisfaction with earlier opinions of the Court with which he disagreed, and that his brief, in revisiting these prior cases, offered nothing new showing the precedential value of those opinions should be reversed.

Model Rule 3.4(C) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

4. Mr. Stilley's conduct violated Model Rule 8.4(d) in that his conduct caused his client's brief to be entirely stricken from the record, delaying proper and full consideration of his client's cause, and causing the Court to expend additional resources and time in considering his brief and then entering an order striking it from the record of the case. Model Rule 8.4(d) requires that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized

Panel A, that the privilege to practice law of Oscar Stilley, Arkansas Bar ID# 91096, be, and hereby is, suspended for three (3) months for his conduct in this matter. He is also ordered to pay a fine of $1,000.00 and costs of $50.00 in this matter. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. The fine and costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL A

By: /s/ Win. A Trafford
Win. A Trafford, Chair, Panel A
Date: November 19, 2002

APPENDIX I – Arkansas Supreme Court Decision Letter dated September 6, 2007 - Denying Pétition for Rehearing

Leslie W. Steen
Office of the Clerk
Supreme Court of the State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Justice Street
Little Rock, Arkansas 72201

September 6, 2007

Oscar Stilley
Attorney at Law
701 S. 21st Street
Fort Smith, AR 72901

RE: 06-972. Oscar Stilley v. Supreme Court Committee on Professional Conduct

Dear Mr. Stilley:

The Arkansas Supreme Court issued the following orders today in the above styled case:

"Petition for rehearing is denied."

"Appellant's motion for recusal from petition for rehearing. Each justice denies suggestion of recusal."

Sincerely,

Leslie W. Steen, Clerk
LWS:jko
cc: Stark Ligon

APPENDIX J – Arkansas Code Annotated § 21-8-304

A.C.A. § 21-8-304. Prohibited activities.[7]

(a) No public official or state employee shall use or attempt to use his or her official position to secure special privileges or exemption for himself or herself or his or her spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that is not available to others except as may be otherwise provided by law.

(b) No public official or state employee shall accept employment or engage in any public or professional activity while serving as a public official which he or she might reasonably expect would require or induce him or her to disclose any information acquired by him or her by reason of his or her official position which is declared by law or regulation to be confidential.

(c) No public official or state employee shall disclose any such information gained by reason of his or her position, nor shall he or she otherwise use such information for his or her personal gain or benefit.

History. Acts 1979, No. 570, §§ 3, 4; Acts 2001, No. 1839, § 22. A.S.A. 1947, §§ 12-3003, 12-3004.

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[7] This section has been amended by Act 221 of 2007

APPENDIX K - Pertinent parts of Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law

Section 2. Definitions.

E. "FORMAL COMPLAINT" means a complaint directed to an attorney by the Office of Professional Conduct setting forth the alleged violation(s) of the Model Rules and informing the attorney of the right to file a written response.

I. "RESPONDENT" or "RESPONDENT ATTORNEY" means an attorney against whom a formal complaint has been initiated whether or not the attorney has failed to file a written response.

Section 5. Office of Professional Conduct.

A. General. The Executive Director of the Office of Professional Conduct shall be an attorney actively licensed to practice law in the State of Arkansas, shall serve at the will of the Court, and shall devote full time and effort to promptly and efficiently perform the duties stated in this Section, and such other duties as directed by the Committee.

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C. Duties-Complaints

(1) It shall be the duty of the Office of Professional

Conduct to receive and investigate all complaints against any member of the Bar. Such complaints shall be docketed and assigned a permanent file number. The Office of Professional Conduct and the Committee shall accept and treat as a formal complaint any writing signed by a judge of a court of record in this State regardless of whether such signature is verified.

Section 7. Procedure.

A. General. A panel of the Committee shall adjudicate all formal complaints alleging violation of the Model Rules that may be brought to its attention in the form of an affidavit, or in respect of which any member of the Committee may have information, and shall give the attorney involved an opportunity to explain or refute the charge.

B. Standard of Proof. Formal charges of misconduct, petitions for reinstatement, and petitions for transfer to or from inactive status shall be established by a preponderance of the evidence.

C. Burden of Proof. The burden of proof in proceedings seeking discipline or involuntary transfer to inactive status is on the Executive Director. The burden of proof in proceedings seeking reinstatement or transfer from involuntary or voluntary inactive status is on the attorney seeking such action.

Section 8. Discovery.

A. Scope. Within ten days following the filing with

the Office of Professional Conduct of a request for a hearing by a respondent attorney after a ballot vote pursuant to Section 10(D) (3), the Executive Director and the respondent attorney shall exchange the names and addresses of all persons having knowledge of relevant facts. Within sixty (60) days following the filing of the request, the Executive Director and the respondent attorney may take depositions in accordance with Arkansas Rule of Civil Procedure 30 and shall comply with reasonable requests for (i) non-privileged information and evidence relevant to the charges or the attorney, and (ii) other material upon good cause shown to the chair of the panel before which the matter was pending.

B. Resolution of Disputes. Disputes concerning discovery shall be determined by the chair of the panel to which the matter was assigned. All discovery orders by the chair are interlocutory and may not be appealed prior to the entry of the final order.

C. Rules of Civil Procedure Not Applicable. Proceedings under these rules are not subject to the Arkansas Rules of Civil Procedure regarding discovery except those relating to depositions and subpoenas.

(Amended by Per Curiam July 9, 2001.)